

Order

**Michigan Supreme Court
Lansing, Michigan**

October 17, 2006

Clifford W. Taylor,
Chief Justice

ADM File No. 2006-03

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Proposed Amendment of
Rule 6.106 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 6.106 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas for public hearings are posted on the Court's website at www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions by strikeover.]

Rule 6.106 Pretrial Release

(A)-(H)[Unchanged.]

(I) Termination of Release Order.

- (1) If the conditions of the release order are met and the defendant is discharged from all obligations in the case, the court must vacate the release order, discharge anyone who has posted bail or bond, and return the cash (or its equivalent) posted in the full amount of the bail, or, if there has been a deposit of 10 percent of the full bail amount, return 90 percent of the deposited money and retain 10 percent.
- (2) If the defendant has failed to comply with the conditions of release, the court may issue a warrant for the arrest of the defendant and enter an order revoking the release order and declaring the bail money deposited or the surety bond, if any, forfeited.

- (a) The court must mail notice of any revocation order immediately to the defendant at the defendant's last known address and, if forfeiture of bail or bond has been ordered, to anyone who posted bail or bond.
 - (b) If the defendant does not appear and surrender to the court within 28 days after the revocation date ~~or does not within the period satisfy the court that there was compliance with the conditions of release or that compliance was impossible through no fault of the defendant,~~ the court may continue the revocation order and enter judgment for the state or local unit of government against the defendant and anyone who posted bail or bond for an amount not to exceed the full amount of the bail, and costs of the court proceedings, or if a surety bond was posted an amount not to exceed the full amount of the surety bond, ~~and costs of the court proceedings.~~ If the amount of a forfeited surety bond is less than the full amount of the bail, the defendant shall continue to be liable to the court for the difference, unless otherwise ordered by the court.
 - (c) The 10 percent bail deposit made under subrule (E)(1)(a)(ii)[B] must be applied to the costs and, if any remains, to the balance of the judgment. The amount applied to the judgment must be transferred to the county treasury for a circuit court case, to the treasuries of the governments contributing to the district control unit for a district court case, or to the treasury of the appropriate municipal government for a municipal court case. The balance of the judgment may be enforced and collected as a judgment entered in a civil case.
- (3) If money was deposited on a bail or bond executed by the defendant, the money must be first applied to the amount of any fine, costs, or statutory assessments imposed and any balance returned, subject to subrule (I)(1).

Staff comment: This proposed amendment would clarify that bail agents would be liable only for the appearance of a defendant, and not for compliance with conditions imposed by the court as part of a conditional release pursuant to MCR 6.106. The proposed amendment also would prohibit a court from entering a judgment that includes the costs of the proceeding against a surety. MCL 765.28 limits judgment against the surety to an amount not more than the full amount of the surety bond.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by February 1, 2007, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2006-03. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 17, 2006

Corbin R. Davis
Clerk